

MONTANA LEGISLATIVE HISTORY

Chapter 125 19 91

Bill H _____ S 89

Original bill & history / c

H. Committee on Business & Economic Development

S. Committee on Business & Industry

Hearing Date(s) Mar 25 _____ c

Hearing Date(s) Jan 21 ✓ c

Senate
No minutes were
located re: dis-
cussion

_____ c

no hearing
minutes

_____ c

_____ c

Date Out

Mar 25

Minutes only

Jan 22

✓ c

Did this bill originate in an interim committee? _____ Yes _____ No

Committee _____

Report _____

1/15	FIRST READING		
1/15	REFERRED TO EDUCATION & CULTURAL RESOURCES		
2/01	HEARING		
2/02	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/04	2ND READING PASSED	49	0
2/05	3RD READING PASSED	49	0
TRANSMITTED TO HOUSE			
2/06	FIRST READING		
2/06	REFERRED TO EDUCATION & CULTURAL RESOURCES		
3/06	HEARING		
3/09	COMMITTEE REPORT—BILL CONCURRED		
3/12	2ND READING CONCURRED	97	1
3/14	3RD READING CONCURRED	95	5
RETURNED TO SENATE			
3/18	SIGNED BY PRESIDENT		
3/19	SIGNED BY SPEAKER		
3/19	TRANSMITTED TO GOVERNOR		
3/20	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 124		

EFFECTIVE DATE: 3/20/91

SB 89 INTRODUCED BY B. BROWN

REAL ESTATE BROKER INCLUDES ONE WHO REFERS CLIENT FOR A FEE

BY REQUEST OF BOARD OF REALTY REGULATION

1/15	INTRODUCED		
1/15	FIRST READING		
1/15	REFERRED TO BUSINESS & INDUSTRY		
1/21	HEARING		
1/22	COMMITTEE REPORT—BILL PASSED		
1/23	2ND READING PASSED	46	4
1/24	3RD READING PASSED	39	11
TRANSMITTED TO HOUSE			
1/25	FIRST READING		
1/25	REFERRED TO BUSINESS & ECONOMIC DEVELOPMENT		
3/05	HEARING		
3/07	COMMITTEE REPORT—BILL CONCURRED		
3/09	2ND READING CONCURRED	91	0
3/11	3RD READING CONCURRED	94	5
RETURNED TO SENATE			
3/15	SIGNED BY PRESIDENT		
3/16	SIGNED BY SPEAKER		
3/16	TRANSMITTED TO GOVERNOR		
3/21	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 125		

EFFECTIVE DATE: 10/01/91

SB 90 INTRODUCED BY JERGESON, ET AL.

RECOGNIZE DENTAL AND DENTAL HYGIENE SCHOOLS; CLARIFY HYGIENIST SUPERVISION

1/15	INTRODUCED		
1/15	FIRST READING		
1/15	REFERRED TO PUBLIC HEALTH, WELFARE & SAFETY		
1/21	HEARING		
1/24	COMMITTEE REPORT—BILL PASSED AS AMENDED		
1/25	2ND READING PASSED AS AMENDED	40	7
1/26	3RD READING PASSED	40	6
TRANSMITTED TO HOUSE			
1/26	FIRST READING		
1/26	REFERRED TO STATE ADMINISTRATION		
1/31	REREFERRED TO HUMAN SERVICES & AGING		
2/08	HEARING		

1 estate firm.

2 (5) "Broker owner" means a broker who owns or has a
3 financial interest in a real estate firm.

4 (6) "Department" means the department of commerce
5 provided for in Title 2, chapter 15, part 18.

6 (7) "Franchise agreement" means a contract or agreement
7 by which:

8 (a) a franchisee is granted the right to engage in
9 business under a marketing plan prescribed in substantial
10 part by the franchisor;

11 (b) the operation of the franchisee's business is
12 substantially associated with the franchisor's trademark,
13 trade name, logotype, or other commercial symbol or
14 advertising designating the franchisor; and

15 (c) the franchisee is required to pay, directly or
16 indirectly, a fee for the right to operate under the
17 agreement.

18 (8) "Person" includes individuals, partnerships,
19 associations, and corporations, foreign and domestic, except
20 that when referring to a person licensed under this chapter,
21 it means an individual.

22 (9) "Real estate" includes leaseholds as well as any
23 other interest or estate in land, whether corporeal,
24 incorporeal, freehold, or nonfreehold and whether the real
25 estate is situated in this state or elsewhere.

1 (10) "Salesman" includes an individual who for a salary,
2 commission, or compensation of any kind is associated,
3 either directly, indirectly, regularly, or occasionally,
4 with a real estate broker to sell, purchase, or negotiate
5 for the sale, purchase, exchange, or renting of real
6 estate."

-End-

MINUTES

MONTANA SENATE 52nd LEGISLATURE - REGULAR SESSION COMMITTEE ON BUSINESS & INDUSTRY

Call to Order: By Chairman J.D. Lynch, on January 21, 1991, at 10:00 a.m.

ROLL CALL

Members Present:

J.D. Lynch, Chairman (D)
John Jr. Kennedy, Vice Chairman (D)
Betty Bruski (D)
Eve Franklin (D)
Delwyn Gage (R)
Jerry Noble (R)
Gene Thayer (R)
Bob Williams (D)

Members Excused: Thomas Hager (R)

Staff Present: Bart Campbell (Legislative Council).

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Announcements/Discussion: None

HEARING ON SENATE BILL 89

Presentation and Opening Statement by Sponsor:

Senator Bob Brown, sponsor of the bill, stated that this bill was done on request by the board of realty regulations. This bill is an act including in the definition of "broker" one who, for a fee, refers a person to another to buy or sell real estate; and amending section 37-51-102. In 1988 the attorney general issued an opinion that the state law doesn't cover a certain for sale by owner operation for real estate. There was an attempt in the 1989 session to cover that loop hole, by B and E of the law on page two. This closes the last remaining loop hole by clarifying that the definition of a broker is one who for a fee refers a person to another to buy or sell real estate.

Proponents' Testimony:

Marcia Allen, a member of the board of realty regulation, spoke in favor of the bill. The board of realty regulation supports this piece of legislation as a result of the attorney

generals opinion that allows referral fees to be paid to a non licensee. The detriment to this activity comes from the creation of a ransom situation. 'I'll give you the name of a perspective purchaser if you pay me a fee to do so' or it creates a bidding situation that allows a name to be recommended to the licensee that's going to pay the highest price to get it. The bill is not intended or designed to affect the token of appreciation, such as a dinner out that is often expressed to those who have been instrumental in the successful conclusion to a sale.

Tom Hopgood, on behalf of the Montana association of realtors, spoke in favor of the bill. In the 1989 session they were active in getting the bill that inserted sub sections B and E into this particular law passed. Sub section F is also a section that they are supporting having that inserted into the law as well, and to make it perfectly clear that this situation is covered by the real estate licensing laws.

Opponents' Testimony:

None.

Questions From Committee Members:

Senator Gage asked what the penalty is for a person who receives compensation for referral.

Marcia Allen replied the board of reality regulations requires that a real estate broker's license must be obtained or sales person license to conduct real estate activities. In 1988 when the attorney general rendered his opinion it excluded the section that allows referring people and receiving compensation to do so.

Senator Gage asked if it did happen what would happen to that broker or the person who makes the referral.

Marcia Allen replied that there is no penalty for this. The brokers are not currently doing it now, but the way the law is currently written the public is going to perceive that they can call with a name and expect a fee.

Grace Berger, administrative assistance to the board of real estate, commented that if this were to pass and be incorporated into the licensing act, to do this activity would be a violation of the licensing act which is a misdemeanor.

Senator Gage commented that according to the bill, a broker also deals in leasing and subleasing. A person could do that according to this with a broker would there be a problem with that.

Steve Maloy introduced himself. He is the chief of the professional occupational licensing bureau which houses the board of real estate regulations.

Grace Berger stated that leasing property is not the problem that buying and selling is.

Marcia Allen commented that when leasing property is concerned they are doing it for a commission and that is stated in the contract that they have with their client.

Senator Gage commented that it would look as though this

would fit under 'broker associate' rather than 'broker owner'.

Grace Berger replied that one refers to the person that owns the agency and the other refers to a person that works for the agency. Broker owner and broker associate requirement and licensing wise there is no difference.

Senator Brown commented that F modifies paragraph three and precedes paragraph four on page two of the bill.

Senator Gage asked if there is no penalty for these people to be doing this what is going to stop it from happening.

Tom Hopgood responded by saying that sub section three defines what a broker is. Sub section four defines a broker associate as a broker that works with somebody that owns an agency. This loop hole that is being proposed would apply to both broker associate or a broker owner. It would also apply to the salesmen.

Senator Gage asked if someone does this, they are considered to be a broker and are subject to the same fines as a broker would be subject to.

Tom Hopgood replied yes.

Senator Lynch asked if this would prohibit someone from voluntarily after the fact giving someone a gift of fifty dollars if a referral was made.

Tom Hopgood replied that there is definitely a distinction between a fee and a gift. If the board were attempting to force this regulation against a real estate salesman were to give a gift for a referral then they would be exceeding the intent that they are trying to do here.

Senator Gage asked if this was crucial enough that it would be effective on passage on approval, or is October 1st okay.

Senator Lynch replied that the effective date would automatically be October 1st unless it is crucial.

Marcia Allen replied that October 1 is fine.

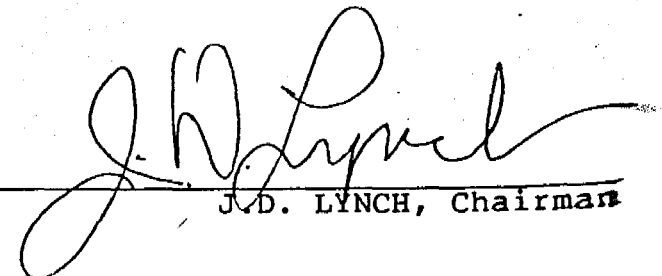
Closing by Sponsor:

Senator Brown closed.

Senator Lynch commented that since there was a few questions and not everyone could attend the meeting today, they would hold executive action on Tuesday, January 22, 1991.

ADJOURNMENT

Adjournment At: 10:20 a.m.



J.D. LYNCH, Chairman

ROLL CALL

Business&IndustryCOMMITTEE

DATE 1/21/91

LEGISLATIVE SESSION

NAME	PRESENT	ABSENT	EXCUSED
Senator Bruski	X		
Senator Franklin	X		
Senator Gage	X		
Senator Hager		X	
Senator Noble	X		
Senator Thayer	X		
Senator Williams	X		
Senator Kennedy	X		
Senator Lynch	X		

Each day attach to minutes.

DATE: _____
BUSINESS & INDUSTRY

1/21/91

VISITORS' REGISTER

[illegible]

(Please leave prepared statement with Secretary)

WITNESS STATEMENT

To be completed by a person testifying or a person who wants their testimony entered into the record.

Dated this 21ST day of Jan, 1991.

Name: Marcia Allen

Address: 629 Helena Ave

Telephone Number: 442-3333

Representing whom?

Board of Realty Regulation

Appearing on which proposal?

SB 89

Do you: Support? ☒

Amend?

Oppose?

Comments:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

MINUTES

MONTANA SENATE 52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS & INDUSTRY

Call to Order: By Chairman J.D. Lynch, on January 22, 1991, at 10:00 a.m.

ROLL CALL

Members Present:

J.D. Lynch, Chairman (D)
John Jr. Kennedy, Vice Chairman (D)
Betty Bruski (D)
Eve Franklin (D)
Delwyn Gage (R)
Thomas Hager (R)
Jerry Noble (R)
Gene Thayer (R)
Bob Williams (D)

Members Excused: None

Staff Present: Bart Campbell (Legislative Council).

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Announcements/Discussion: None

EXECUTIVE ACTION ON SB 89

Discussion:

Senator Williams asked Senator Gage if his questions were answered well enough.

Senator Gage answered yes.

Senator Thayer moved that SB 89 do pass.

SB 89 passed on a 8 to 1 vote.

EXECUTIVE ACTION ON SB 48

Discussion:

Senator Lynch commented that executive action was not scheduled for SB 48 today, but that is not a requirement. It was held up for a technical amendment on request of department of agriculture.

Bart Campbell, staff researcher, explained the amendment (See amendments to senate bill 48 copy attached).

Senator Noble asked if Senator Nathe was shown the amendment.

ROLL CALL VOTE

SENATE COMMITTEE Business and Industry

Date

1/22/91

Bill No.

SB89

Time

10:00

NAME

YES

NO

Senator Bruski	X	
Senator Franklin	X	
Senator Gage		X
Senator Hager	X	
Senator Noble	X	
Senator Thayer	X	
Senator Williams	X	
Senator Kennedy	X	
Senator Lynch	X	

Dara Anderson

Secretary

JD Lynch

Chairman

Motion:

SB89 Do Pass

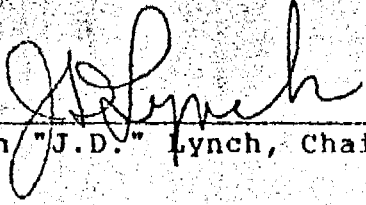
SENATE STANDING COMMITTEE REPORT

Page 1 of 1
January 22, 1991

MR. PRESIDENT:

We, your committee on Business and Industry having had under consideration Senate Bill No. 89 (first reading copy, -- white), respectfully report that Senate Bill No. 89 do pass.

Signed: _____


John "J.D." Lynch, Chairman

 1/22/91
Adm. Coord.

SB 1/22 '00
Sec. of Senate

141126SC.Sj1

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS & ECONOMIC DEVELOPMENT

Call to Order: By REP. BOB BACHINI, CHAIRMAN, on March 5, 1991,
at 8:00 a.m.

ROLL CALL

Members Present:

Bob Bachini, Chairman (D)
Sheila Rice, Vice-Chair (D)
Joe Barnett (R)
Steve Benedict (R)
Brent Cromley (D)
Alvin Ellis, Jr. (R)
Stella Jean Hansen (D)
H.S. "Sonny" Hanson (R)
Tom Kilpatrick (D)
Dick Knox (R)
Don Larson (D)
Scott McCulloch (D)
Bob Pavlovich (D)
John Scott (D)
Don Steppler (D)
Rolph Tunby (R)
Norm Wallin (R)

Member Excused: Rep. Tim Dowell

Staff Present: Paul Verdon, Legislative Council
Jo Lahti, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Announcements/Discussion: HB 244, SB 8, SB 190 were heard.
Executive Action was taken on SB 8, SB 89, SB 190.

HEARING ON SENATE BILL 244

SEN. GREG JERGESON, SD 8, Chinook, said this bill from the
Legislative Audit Committee will require Business and Licensing
Boards who expand their responsibilities to consult the
Department of Commerce for the possible availability of money.
If there is not a budget they need to find a way to raise money.
Members of the Legislative Audit Committee will answer questions.
There were no objections to this bill when it passed the Senate.

EXECUTIVE ACTION on SB 89Discussion:

REP. LARSON asked if a person worked for a large company in Missoula, and asked the personnel manager to let him know if any new people were looking for a residence, would that be a violation of this law. This makes the definition of a realtor unclear.

REP. ELLIS said he understood that only if a person made a practice of doing referrals would he be subject to the law.

REP. HANSEN said this Bill was to address the real estate agencies that advertise themselves as "For Sale by Owner". There are fees at times for referrals. She sees a difference in the "For Sale for Owner" because there are fees collected for referral information.

REP. LARSON asked why can't the Board of Realty Regulation do this by rule. Why is the Bill needed? REP. HANSEN said because the statutes do not state that a broker's license is needed.

Vote: Motion Carried with REPS. LARSON and BENEDICT Voting No.

HEARING ON SB 190

Motion: REP. ELLIS SB 190 BE NOT CONCURRED IN.

Discussion: REP. ELLIS said the incentive for this legislation has to do with livestock marketing. Beef packing industries have become much more efficient in the past years. Once the beef industry sold meat in boxes instead of carcasses, there were increases in the prices. They did not have to force a sale. Since 1985 there have been profits in the industry. The meat packing industry would not be helped with this legislation.

Substitute Motion: REP. STELLA JEAN HANSEN made a Substitute Motion SB 190 BE CONCURRED IN.

Discussion: REP. HANSEN thinks the Bill is not just about the livestock industry. It is a fairness issue. She has been involved in two antitrust suit. These were collective suits. It took ten years to be paid off. Antitrust laws are not as bad as Mr. Shanahan would lead people to believe.

REP. SCOTT spoke in favor of Rep. Hansen's motion. This is much needed, preventive legislation due to the loss of the federal antitrust enforcement. He cited the example of the McCarthy farm case. It has been in litigation for eleven years. This was a case where the railroads were overcharging Montana farmers.

REP. LARSON spoke in favor of the substitute motion. During the session, the Legislature has given the Attorney General

SENATE BILL NO. 89

INTRODUCED BY B. BROWN

BY REQUEST OF THE BOARD OF REALTY REGULATION

A BILL FOR AN ACT ENTITLED: "AN ACT INCLUDING IN THE DEFINITION OF "BROKER" ONE WHO, FOR A FEE, REFERS A PERSON TO ANOTHER TO BUY OR SELL REAL ESTATE; AND AMENDING SECTION 37-51-102, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 37-51-102, MCA, is amended to read:

"37-51-102. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Account" means the real estate recovery account established in 37-51-501.

(2) "Board" means the board of realty regulation provided for in 2-15-1867.

(3) "Broker" includes an individual who:

(a) for another or for valuable consideration or who with the intent or expectation of receiving valuable consideration negotiates or attempts to negotiate the listing, sale, purchase, rental, exchange, or lease of real estate or of the improvements on real estate or collects rents or attempts to collect rents;

(b) is employed by or on behalf of the owner or lessor

of real estate to conduct the sale, leasing, subleasing, or other disposition of real estate for consideration;

(c) engages in the business of charging an advance fee or contracting for collection of a fee in connection with a contract by which he undertakes primarily to promote the sale, lease, or other disposition of real estate in this state through its listing in a publication issued primarily for this purpose or for referral of information concerning real estate to brokers;

(d) makes the advertising, sale, lease, or other real estate information available by public display to potential buyers and who aids, attempts, or offers to aid, for a fee, any person in locating or obtaining any real estate for purchase or lease;

(e) aids or attempts or offers to aid, for a fee, any person in locating or obtaining any real estate for purchase or lease; or

(f) receives a fee, commission, or other compensation for referring to a licensed broker or salesman the name of a prospective buyer or seller of real property; or

†f†g advertises or holds himself out as engaged in any of the activities referred to in subsections (3)(a) through †3†e†(3)†f.

(4) "Broker associate" means a broker who associates with a broker owner and does not own an interest in a real

1 estate firm.

2 (5) "Broker owner" means a broker who owns or has a
3 financial interest in a real estate firm.

4 (6) "Department" means the department of commerce
5 provided for in Title 2, chapter 15, part 18.

6 (7) "Franchise agreement" means a contract or agreement
7 by which:

8 (a) a franchisee is granted the right to engage in
9 business under a marketing plan prescribed in substantial
10 part by the franchisor;

11 (b) the operation of the franchisee's business is
12 substantially associated with the franchisor's trademark,
13 trade name, logotype, or other commercial symbol or
14 advertising designating the franchisor; and

15 (c) the franchisee is required to pay, directly or
16 indirectly, a fee for the right to operate under the
17 agreement.

18 (8) "Person" includes individuals, partnerships,
19 associations, and corporations, foreign and domestic, except
20 that when referring to a person licensed under this chapter,
21 it means an individual.

22 (9) "Real estate" includes leaseholds as well as any
23 other interest or estate in land, whether corporeal,
24 incorporeal, freehold, or nonfreehold and whether the real
25 estate is situated in this state or elsewhere.

1 (10) "Salesman" includes an individual who for a salary,
2 commission, or compensation of any kind is associated,
3 either directly, indirectly, regularly, or occasionally,
4 with a real estate broker to sell, purchase, or negotiate
5 for the sale, purchase, exchange, or renting of real
6 estate."

-End-